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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

GREG ROBILLARD, Plaintiff,

v.

OPAL LABS INC, an Oregon corporation, Defendant.

3:16-cv-00780-AC

DEFENDANT OPAL LABS INC.'S ANSWER AND DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

In answer to Plaintiff Greg Robillard's Complaint, Defendant Opal Labs Inc. ("Opal") admits, denies, and alleges as follows:

INTRODUCTION

1. Opal denies that it acted in any way unlawfully toward its former employee Greg Robillard ("Robillard" or "Plaintiff"), and denies that Robillard is entitled to any relief. During Robillard's brief employment at Opal, he was a software engineer, and his primary job duty was

to perform technical integrations. Integrations are required for Opal's software, a platform for brand marketing teams to orchestrate media content, to function effectively with third-party services that distribute that content via marketing channels such as email, web, Twitter, Facebook, and others. Integrations require an analysis of software functionality; consultation with users of the Opal platform and its partners' services to determine what functionality is needed; and engineering the software modifications required to deliver that functionality. Robillard was paid at least $90,000 per year for his work as a software engineer, he received compensation on a salary basis, and he was a "computer employee" for purposes of state and federal overtime law. He was 41 years old when he was hired, and just 42 years old when his employment ended less than 7 months later.

Robillard's employment ended because of poor job performance. He was unable to demonstrate skills and abilities he claimed he possessed when he was hired. He neglected to notify Opal about his failure to meet basic customer expectations. For example, Robillard failed to notify Opal that a key product demonstration he was responsible for coding would not be available when promised. Later, he failed to appear at work for a conference call he had promised to attend, and, in violation of company policy, he did not let anyone at Opal know he would be absent. His employment was terminated later that same day.

2. Answering paragraph 1, Opal admits that Robillard has styled his claims as described, but denies that the claims are valid or that they are supported by the facts or the law.

PARTIES

3. Answering paragraph 2, Opal states that it is without personal knowledge of Robillard's current residence and for that reason denies paragraph 2, except that Opal admits that

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Robillard was an employee for less than 7 months, from November 10, 2014 to May 29, 2015.

4. Answering paragraph 3, Opal admits that it is an Oregon corporation headquartered in Portland, Oregon. Because Robillard does not define "all material times," Opal cannot state whether or not it had at least 30 employees in its Portland location at "all material times" and for that reason denies the remainder of paragraph 3.

JURISDICTION AND VENUE

5. Answering paragraph 4, Opal admits that this court has or may elect to exercise jurisdiction over Robillard's claims, but denies that Robillard's claims are valid or that they are supported by the facts or the law.

FACTUAL ALLEGATIONS

6. Answering paragraph 5, Opal admits that at the time Robillard filed his complaint he was a 43 year-old male, and admits that he was over 40 years old both at the time he was hired and when his employment ended less than 7 months later.

7. Answering paragraph 6, Opal admits that Robillard was hired as a software engineer with the title of "Lead Enterprise Engineer" in Opal's Portland office. Robillard's primary job duty was performing integrations, a highly technical task that requires analyzing the functionality of both Opal's and the integration partners' software systems, consulting with users to determine the desired functional specifications, and then designing and engineering solutions to allow Opal's software to effectively communicate with the various partners' software and produce the desired output. Opal denies the remainder of paragraph 6.

8. Answering paragraph 7, Opal states that Robillard was supervised by David Gorman when Robillard was first hired. Shortly after Robillard's hiring, Dan Barret was put in

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charge of the back-end team of which Robillard was a part. Opal denies that Robillard asked or inquired who his supervisor was or otherwise expressed confusion about who he reported to, and denies that Robillard was not informed as to who his supervisor was. Opal lacks personal knowledge as to Robillard's failure to understand or ascertain who his supervisor was, and for that reason denies the remaining allegations in paragraph 7.

9. Answering paragraph 8, Opal admits that Robillard received payment from Opal at a rate equal to at least $90,000 per year, but denies any implication that these payments constituted the entirety of the value of Robillard's compensation from Opal.

10. Answering paragraph 12, Opal admits that Robillard was over 40 years old when he was hired, and admits that Robillard is 12 years older than David Gorman. Opal denies the remainder of paragraph 12.

11. Answering paragraph 19, Opal admits that Robillard's employment was terminated on May 29, 2015, during a meeting at which David Gorman and Robert Scott were present. Robillard's employment was terminated for the reasons provided in paragraph 1 of this answer.

12. Answering paragraph 25, Opal admits that it is subject to applicable provisions of the Fair Labor Standards Act, and alleges that Robillard's job duties and compensation as a Lead Enterprise Engineer fall within at least one exemption to the Act, including but not limited to the "computer employee exemption" at 29 U.S.C.S. § 213.

13. Answering paragraph 43, Opal admits that it has a Paid Time Off policy under which employees are encouraged to take at least three paid weeks off each year while employed at Opal. Opal denies any implication that its policies, practices, or agreements entitled Robillard

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to payment for accrued but unused paid time off, if any, when his employment was terminated.

14. Answering paragraph 56, Opal admits that it meets the definition of an "Employer" as presented in Or. Rev. Stat. Ann. § 659A.001 and Or. Admin. R. 839-006-0205.

15. Opal denies paragraphs 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 44, 45, 46, 48, 49, 50, 51, 52, 53, 55, 57, 58, 59, 60, 61, 62, 63, and 64 of Robillard's Complaint and denies all other allegations not expressly admitted herein.

16. To the extent Robillard realleges prior allegations, including in paragraphs 24, 33, 42, 47, and 54 of his Complaint, Opal realleges its answer above and any specific responses to those allegations.

DEFENSES

By way of defense, and as a preliminary matter and without assuming Plaintiff's burden of proof, which burden Defendant asserts is on Plaintiff, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to Mitigate)

17. If damaged, Plaintiff failed to make reasonable efforts to mitigate any damages by, among other things, failing to seek or secure alternative employment after his employment at Opal ended. Upon information and belief, Defendant alleges that Plaintiff chose to engage in creative writing activities in lieu of seeking employment as a software engineer.

SECOND AFFIRMATIVE DEFENSE

(At-Will Employment)

18. Plaintiff's claims are barred in whole or part because Plaintiff was an at-will

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employee and did not have an employment contract which altered his at-will employment status or promised him payment for any paid time off at the end of his employment, as Plaintiff alleges in paragraphs 43, 44, 45, and 46 of his Complaint.

THIRD AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

19. Following Plaintiff's termination, Defendant learned of Plaintiff's inappropriate and unprofessional conduct, including but not limited to comments made during a stand-up comedy routine, which provided separate and independent grounds for termination.

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff's Conduct)

20. Plaintiff's own deliberate, willful and/or negligent conduct in the workplace, including intentionally failing to inform Opal about his failure to timely complete projects or attend meetings, proximately caused or contributed to some or all of the damages and injuries alleged in his Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

21. One or more of Plaintiff's claims including any claim Plaintiff may bring pursuant to the Age Discrimination in Employment Act are barred because Plaintiff failed to exhaust his administrative remedies.

SIXTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

22. To the extent Plaintiff has an adequate remedy at law for the equitable relief he

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seeks in paragraphs 58 and 59 of his Complaint, his claims for equitable relief are barred.

SEVENTH AFFIRMATIVE DEFENSE

(Exempt Employee)

23. Plaintiff was an exempt employee based on his job duties, his payment at a rate of at least $90,000 per year, and his receipt of compensation on a salary basis. Plaintiff's exempt status means he is not entitled to additional overtime pay and he has received all compensation he was due from Defendant.

Defendant reserves the right to allege additional defenses and to add counterclaims should they become apparent during discovery.

WHEREFORE, Defendant respectfully requests that this Court enter judgment as follows:

1. For judgment against Plaintiff on all claims for relief;

2. For an award of Defendant's reasonable costs, attorneys' fees, and disbursements incurred herein; and

3. For such further relief that the Court deems just, equitable, and proper.

DATED this 13th day of October, 2016.

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By *s/Damien T. Munsinger*
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2016, I served the foregoing **DEFENDANT OPAL LABS INC.'S ANSWER AND DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the following parties at the following addresses:

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by the following indicated method(s) set forth below:

☑ **Electronic Filing using the Court's ECF System**

☐ **Email**

☐ **Hand Delivery**

☐ **First-class mail, postage prepaid**

s/*Damien T. Munsinger*
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